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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re M.A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. M.A., Defendant and Appellant.	A154031 (Contra Costa County Super. Ct. No. J1800273)

I. BACKGROUND

This appeal challenges an electronic search probation condition in a juvenile delinquency case. According to the probation report, the minor, M.A., a 17 year old at the time of the offense, was stopped with another juvenile while driving without a license. In the car were two chainsaws that had been stolen from an Orchard Supply Hardware. Text messages were found on the minor's cell phone evidencing a plan to steal and sell the stolen goods, something that the minor admitted in his probation interview that he and his cohort had done before.

On February 26, 2018, the Napa County District Attorney filed a juvenile wardship petition pursuant to Welfare and Institutions Code section 602, subdivision (a), alleging that appellant conspired to commit a crime (Pen. Code, § 182, subd. (a)(1); count

one), and shoplifted (Pen. Code, § 459.5; count two). The minor admitted to both counts as alleged.

The juvenile court ordered the minor committed to the Orin Allen Youth Rehabilitation Center for six months, to be followed by a six-month period of probation. Among the probation conditions is a clause requiring minor to "submit all electronic devices under [his] control to search of any text messages, voicemail messages, call logs, photographs, e-mail accounts and social media accounts, for communications related to theft," to be surrendered on demand, with or without a warrant.

II. APPLICABLE LAW

The single issue raised on appeal is a constitutional overbreadth challenge to the electronic search condition.

At the threshold, the People argue that appellant forfeited any overbreadth issue because the juvenile court adopted the "related to theft" language at issue here on his counsel's suggestion. We will exercise our discretion to reach the merits of the issue. (*In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7 (*Sheena K.*)), but on the merits we see no constitutional defect in the challenged condition and will therefore affirm.

We review constitutional challenges to probation conditions de novo. (*People v. Appleton* (2016) 245 Cal.App.4th 717, 723 (*Appleton*).) We begin with the recognition that "probation is a privilege and not a right, and . . . adult probationers, in preference to incarceration, validly may consent to limitations upon their constitutional rights—as, for example, when they agree to warrantless search conditions." (*People v. Olguin* (2008) 45 Cal.4th 375, 384.) Here we have a juvenile probationer. Juvenile wards are susceptible to very broad oversight. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 909–910.) Welfare and Institutions Code section 730 authorizes juvenile courts to "impose and require any and all reasonable [probation] conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730, subd. (b).) "A juvenile court . . . may even impose a condition of probation that would be unconstitutional or otherwise improper so

long as it is tailored to specifically meet the needs of the juvenile." (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5.)

But even under the standards that apply to adult probationers, we conclude that the condition at issue in this case passes constitutional muster. " 'The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.' " (*People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346.) A "probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) The condition must be narrowly tailored to meet the needs of the individual (*In re Binh L.* (1992) 5 Cal.App.4th 194, 203), and must be "reasonably related to the compelling state interest in the minor's reformation and rehabilitation" (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1034).

III. ANALYSIS

Appellant relies heavily on the United States Supreme Court's 2014 decision *Riley v. California* (2014) 573 U.S. 373 (*Riley*). We recognize that M.A.'s probation status does not eliminate his constitutional privacy rights (*Appleton*, *supra*, 245 Cal.App.4th at p. 724), but it does differentiate this case from *Riley*, *supra*, 573 U.S. 373. *Riley* held that the warrantless search of a suspect's cell phone implicated the suspect's Fourth Amendment rights. (*Id.* at p. 401.) This division has held that *Riley* is inapposite in the probation context because it did not involve probation conditions. (*In re J.E.* (2016) 1 Cal.App.5th 795, 804, review granted Oct. 12, 2016, S236628.) " 'Inherent in the very nature of probation is that probationers "do not enjoy 'the absolute liberty to which every citizen is entitled.' " [Citations.] Just as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens.' " (*Id.* at pp. 804–805, quoting *United States v. Knights* (2001) 534 U.S. 112, 119.)

In *Appleton*, the court, applying the reasoning in *Riley*, found an electronic search condition was overbroad since it allowed the search of "vast amounts of personal information unrelated to defendant's criminal conduct or his potential for future criminality." (*Appleton, supra,* 245 Cal.App.4th at p. 727.) The probation condition read: " 'Any computers and all other electronic devices belonging to the defendant, including but not limited to cellular telephones, laptop computers or notepads, shall be subject to forensic analysis search for material prohibited by law. [The defendant] shall not clean or delete internet browsing activity on any electronic device that [he] own[s] and [the defendant] must keep a minimum of four weeks of history.' " (*Id.* at p. 721.) The court concluded that the probationary goals could be served through narrower means, such as by requiring the defendant to submit his social media accounts and passwords for monitoring or obtaining his probation officer's approval before using them. (*Id.* at p. 727.)

Because appellant used electronic communications to carry out his conspiratorial role in the burglary he was found to have committed, the case is controlled by *People v. Ebertowski* (2014) 228 Cal.App.4th 1170, 1172–1173 (*Ebertowski*), not by *Appleton*. In *Ebertowski*, the defendant challenged probation conditions requiring him to provide passwords to his electronic devices and social media sites and to submit to warrantless searches of those devices and sites. (*Id.* at p. 1172.) The court concluded the conditions were not overbroad because the "minimal invasion" into the defendant's privacy resulting from enforcement of the electronic search condition was outweighed by the government's interest in protecting the public by ensuring that the defendant complied with his anti-gang probation conditions. (*Id.* at p. 1176.) Similarly, here, as a result of the "related to theft" limitation placed on the search condition, a probation officer may infringe appellant's privacy interests, but only to the extent the data content searched is reasonably likely to yield evidence of further activities "related to theft." Other data that may be present on seized electronic devices, such as medical records, is not subject to search.

IV. DISPOSITION

Affirmed.

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STREETER, J.

We concur:

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POLLAK, P. J.

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TUCHER, J.